

In the Matter of Merchant Mariner's Document No. Z-735650-D2 and All Other Seaman Documents

Issued to: ALBERT H. LOUDEN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1133

ALBERT H. LOUDEN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 5 March 1959, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents upon finding him guilty of misconduct.

The first specification alleges that while serving as Chief Pumpman on board a merchant vessel of the United States, the SS HUNTERS POINT, under authority of the document above described, on or about 31 July 1958, Appellant wrongfully failed to properly perform his duties and was wrongfully under the influence of liquor aboard ship on said date at Richmond, California.

The second specification alleges that while serving under the authority of his document as plumber and machinist on board a merchant vessel of the United States, the SS BROOKLYN HEIGHTS, Appellant wrongfully failed to report for work on time on 23 January 1959 and was wrongfully absent from his ship and duties on 23 January 1959 at Hong Kong, British Crown Colony.

At the hearing on 20 February 1959, Appellant was given a full explanation of the nature of the proceedings and the rights to which he was entitled. Although advised of his right to be represented by counsel of his own choice, Appellant elected to waive that right and act as his own counsel. He entered, in substance, a plea of not guilty to the first specification but guilty to the second specification.

The Investigating Officer made his opening statement and introduced in evidence certified extracts from the Shipping Articles and the Official Logbook of the SS HUNTERS POINT.

In defense, Appellant made a sworn statement in denial of the allegations of the first specification.

At the conclusion of the hearing, the oral argument of the Investigating Officer was heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner, on 5 March 1959, announced the decision in which he

concluded that the charge and two specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of four months including a prior suspension of three months on twelve months' probation. Appeal was timely filed on 2 April 1959.

FINDINGS OF FACT

On 23 January 1959, Appellant was serving as Plumber and Machinist on board the United States SS BROOKLYN HEIGHTS and acting under authority of his Merchant Mariner's Document No. Z-735650-D2 while the ship was in the port of Hong Kong, British Crown Colony. On the above date, Appellant, who was ashore, failed to report for work on time and was absent from his ship and duties.

Appellant has been going to sea on and off since 1917. By order of a U.S. Coast Guard Hearing Examiner at Honolulu, Hawaii on 31 March 1958, Appellant's documents were suspended three months outright together with three months on twelve months' probation for assault and failure to stand a gangway watch. He has no other prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended by Appellant that he was improperly found guilty of the first specification under the charge and that he now has been to produce evidence, which was not available at the time of the hearing, which proves his innocence.

OPINION

Although the logbook extracts of the SS HUNTERS POINT were not inadmissible evidence, it is a general rule that such logbook entries are not sufficient to support a prima facie case unless they appear to have been made in substantial compliance with the provisions of 46 USC 702. In this case testimony of the Appellant indicates that the logbook entry in question was never read to him, was never shown to him, he was given no opportunity to make reply to it, nor was a copy of it furnished to him. The logbook entry purports to be made on 31 July 1958 and Appellant was not discharged from the ship until 1 August 1958, therefore it appears that he should have been given notice of the entry. Under these circumstances it is felt that the entry was obviously not in substantial compliance with the word or spirit of 46 U.S.C. 702.

The certified extracts of the Shipping Articles of the HUNTERS POINT, admitted in evidence, indicate that Appellant was discharged from the vessel by reason of mutual consent. This is inconsistent with the entry in the logbook that Appellant was discharged "for cause", and tends to impeach the veracity of the log entry.

In addition, Appellant has enclosed with his appeal a reproduced copy of an overtime work sheet from the SS HUNTERS POINT showing that Appellant, on 31 July commenced overtime at

2000 and worked until 0500 on 1 August 1958.

In view of the foregoing, I find that the first specification under the charge has not been proved by reliable, probative and substantial evidence.

Since Appellant admitted that he was guilty of the second specification of the charge, there was no issue of fact to be resolved. Under these circumstances the Examiner correctly found Appellant to be guilty because his conduct was wrongful.

CONCLUSION

The Examiner's conclusion that the Appellant was guilty of the first specification was erroneous and is reversed. The specification is dismissed. The Examiner's conclusion that Appellant was guilty of the second specification was correct and is affirmed. Accordingly, the Examiner's conclusion that Appellant was guilty of the charge of misconduct is affirmed.

In light of Appellant's probationary status at the time he committed the acts for which he was correctly found guilty. I feel that the Examiner's order vacating suspension of the suspended portion of the prior order and the additional imposition of one month outright suspension of Appellant's documents was a suitable one despite the dismissal of the first specification.

ORDER

The order of the Examiner dated at San Francisco, California on 5 March 1959, is ~~REVERSED~~ **AFFIRMED**.

A.C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 28th day of January 1960.